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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12020-mg

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In the Matter of:

RESIDENTIAL CAPITAL, LLC, et al.,

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

September 21, 2015

10:02 AM

B E F O R E:

HON. MARTIN GLENN

U.S. BANKRUPTCY JUDGE

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Doc# 9147 Status Conference on ResCap Borrower Claims Trust's  
Sixty-Ninth Omnibus Objection to Claims (No Liability Borrower  
Claims) Solely as it Relates to the Claim Filed by Maurice  
Sharpe.

Status Conference RE: Claims of Elda and Maria Thompson.  
Trial Set for 11/04/15 at 2:00 PM.

Status Conference Regarding Claims of Kristin Karmazyn.

Doc# 8819 Case Management and Scheduling Conference Regarding  
Matters Involving the Trust and Duncan K. Robertson.  
Telephonic Final Pre-Trial Conference Set for 11/4/2015 at 5:00  
PM. Trial Set for 11/09/2015 and 11/10/2015, Starting at 9:00  
AM on Both Dates.

Transcribed by: Aliza Chodoff  
eScribers, LLC  
700 West 192nd Street, Suite #607  
New York, NY 10040  
(973)406-2250  
operations@escribers.net

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A P P E A R A N C E S :

MORRISON & FOERSTER LLP

Attorneys for the ResCap Borrower Claims Trust  
250 West 55th Street  
New York, NY 10019

BY: JORDAN A. WISHNEW, ESQ.  
ADAM LEWIS, ESQ. (TELEPHONICALLY)

ALDRIDGE PITE, LLP

Attorneys for ResCap Borrower Claims Trust  
2 North Central Avenue  
Suite 1135  
Phoenix, AZ 85004

BY: LAUREL I. HANDLEY, ESQ. (TELEPHONICALLY)

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KENNETH M. LEWIS, ESQ.

Attorneys for Maurice Sharpe  
120 Bloomingdale Road  
Suite 100  
White Plains, NY 10605

BY: KENNETH M. LEWIS, ESQ.

DAVID J. WINTERON & ASSOCIATES, LTD.

Attorneys for Maurice Sharpe  
1140 N Town Center Drive  
Suite 120  
Las Vegas, NV 89144

BY: DAVID J. WINTERTON, ESQ. (TELEPHONICALLY)

ALSO PRESENT:

KRISTIN E. KARMAZYN, Party Pro Se (TELEPHONICALLY)  
DUNCAN K. ROBERTSON, Party Pro Se (TELEPHONICALLY)  
ELDA THOMPSON, Party Pro Se (TELEPHONICALLY)

1 P R O C E E D I N G S

2 THE COURT: All right. Please be seated. All right.

3 We're here in Residential Capital, number 12-12020.

4 Mr. Wishnew?

5 MR. WISHNEW: Good morning, Your Honor. Jordan --

6 THE COURT: Good morning.

7 MR. WISHNEW: -- Wishnew.

8 MS. HANDLEY: Yes?

9 MR. WISHNEW: Good morning, Your Honor. Jordan  
10 Wishnew of Morrison & Foerster for the ResCap Borrower Claims  
11 Trust.

12 Your Honor, today's agenda  
13 constitute this -- consists of four status conferences on some  
14 outstanding claims objections both for the ResCap Borrower  
15 Claims Trust and one dealing with the ResCap Liquidating Trust.

16 The first conference going forward today deals with  
17 the claim of Maurice Sharpe, claim number 2079 being held by  
18 the ResCap Borrower Claims Trust, and this dates back to the  
19 Borrower Claims Trust's sixty-ninth omnibus objection. I'll  
20 let counsel for Mr. Sharpe be heard.

21 THE COURT: All right.

22 MR. LEWIS: Good morning, Your Honor. Kenneth Lewis,  
23 counsel for Mr. Sharpe.

24 THE COURT: All right. Is Colorado counsel or,  
25 what -- Nevada counsel?

RESIDENTIAL CAPITAL, LLC, et al.

6

1 MR. WISHNEW: Your Honor.

2 MR. LEWIS: Nevada counsel is on the phone as well.

3 THE COURT: Could you identify yourself, please?

4 MS. HANDLEY: Good morning, Your Honor. This is

5 Laurel Handley with Aldridge Pite for the ResCap Borrower

6 Claims Trust.

7 THE COURT: All right. Anybody else on the phone?

8 MR. LEWIS: I was told Mr. Winterton phoned in.

9 THE COURT: Mr. Winterton, are you on the phone?

10 MR. WINTERTON: Hello?

11 THE COURT: Yes.

12 MR. WINTERTON: Hello?

13 THE COURT: Yes. Can you hear us?

14 MR. WINTERTON: Yes, I can.

15 THE COURT: Please identify yourself.

16 MR. WINTERTON: Yes, David Winterton on behalf of

17 Maurice Sharpe.

18 THE COURT: Thank you, Mr. Winterton.

19 Okay. Mr. Wishnew?

20 MR. WISHNEW: Thank you, Your Honor. Your Honor,

21 briefly, over the past few months, the Borrower Claims Trust

22 and Mr. Sharpe's counsel have tried -- or have been in

23 discussions concerning a possible settlement. At this point,

24 notwithstanding those discussions, we have not been able to

25 reach a consensual resolution of this claim. And so we have

1 worked with counsel to prepare a proposed case management and  
2 scheduling order for Your Honor's consideration, which was  
3 provided to chambers late last week. If you like, I can go  
4 through the terms.

5 THE COURT: No, I have that. I've gone through it.  
6 I'm largely in agreement. There are some -- a few changes that  
7 I'm going to make to it. It's just -- some of it is just to  
8 put dates to --

9 MR. WISHNEW: Sure.

10 THE COURT: -- the time periods.

11 MR. WISHNEW: Yeah.

12 THE COURT: So if you have copies with you, in  
13 paragraph 3, the fact discovery cutoff, it's going to be  
14 changed to "on or before January 19th, 2016." That's the 120  
15 days. Frankly, if we weren't getting into the holiday season,  
16 I would have shortened the time. But because of the holidays,  
17 Thanksgiving and then the Christmas holiday, I left the 120  
18 days. So that's going to be changed to January 19th.

19 In paragraph 8, the date for the joint pre-trial  
20 conference order, it's going to -- instead of "within thirty  
21 days after the date of the close of fact discovery," it's going  
22 to be "on or before February 18th, 2016." That's essentially  
23 the time period. I haven't shortened the time.

24 For the final pre-trial conference, February 25, 2016,  
25 at 10 a.m. And then I am adding a new paragraph 11. What's

1 now paragraph 11 will be paragraph 12, and the addition is  
2 going to be the following: "The trial in this matter is  
3 scheduled to begin on March 7, 2016, at 9 a.m. and shall  
4 continue day to day until completed. The Court anticipates  
5 imposing time limits on the length of the trial during the  
6 final pre-trial conference."

7 So Mr. Lewis and Mr. Winterton, it's been my practice  
8 in trials lasting more than two days to do so-called timed  
9 trials, where I set the total time for trial, divide it between  
10 the parties. I usually make that decision at the final pre-  
11 trial conference. You ought to talk about it among yourselves,  
12 because you may be able to come to an agreement. It's  
13 obviously premature now, because I don't know how many  
14 witnesses you still have discovery to do. I generally require  
15 that for any witness within the control of a party, that direct  
16 testimony be in written narrative form, declaration under oath,  
17 with the declarant in court for cross-examination.

18 The only exceptions I will make to that usually are  
19 in -- sometimes in denial of discharge adversary proceedings  
20 where credibility is the crucial issue, these kinds of claims  
21 in ResCap have not really -- don't usually fall into that  
22 category. So we get the written direct testimony in advance,  
23 filed in advance, the declarant in court for cross-examination.  
24 With depositions I require designations and counterdesignations  
25 and objections in advance. So with both the written narrative,



1 with declarations and depositions -- and I don't permit entire  
2 depositions to be designated. It has to be by page and line  
3 number. You just can't just dump entire deposition transcripts  
4 in.

5 When I take the bench for the trial, I will have read  
6 the direct testimony and the depositions so we can proceed  
7 expeditiously. What I would ask you to do -- and I understand  
8 the issues here -- focus on the alleged forgery of the  
9 refinance, and then under the UCC, whether -- I'm shorthanding  
10 this -- whether Mr. Sharpe ratified the alleged refinanced note  
11 by use of proceeds. I'm obviously shorthanding that. My prior  
12 opinion addresses it in some greater length.

13 So when you prepare for trial, you ought -- before the  
14 pre-trial conference, you really need to talk about what  
15 witnesses are going to testify live, who's going to be  
16 presented by deposition, who's going to be presented with  
17 written direct and cross-examination. I'll ask you -- ask  
18 counsel to give me a pre -- their best view of the length of  
19 the trial, and I probably will impose time limits. I have to  
20 say in every case in which I have imposed the limits, I think  
21 I've done it fairly. And counsel in every case have finished  
22 in less time than I've allocated. What it tends to do, though,  
23 is focus the attention of what do I really need to put in at  
24 the trial.

25 So I'm just kind of alerting you to that now.

1 Mr. Wishnew, do I have -- have you e-mailed this -- do  
2 I have a copy of this proposed --

3 MR. WISHNEW: I believe so.

4 THE COURT: -- case management order?

5 MR. WISHNEW: It's e-mailed to chambers, so --

6 THE COURT: Okay.

7 MR. WISHNEW: -- yeah. If not, I can do it when I get  
8 back to the court -- when I get back to the office.

9 THE COURT: All right. So we've completed -- almost  
10 completed the transition in law clerks --

11 MR. WISHNEW: Yes.

12 THE COURT: -- this week. Sean Mitchell started  
13 today.

14 MR. WISHNEW: Welcome.

15 THE COURT: Mariloly Orozco started last week. I'm  
16 actually going to have a third clerk part of the time.  
17 Actually, Joe Jones, who is the ECRO, who's been working in the  
18 clerk's office, is going to be a third clerk --

19 MR. WISHNEW: Oh, excellent.

20 THE COURT: -- for Judge Morris and myself.

21 MR. WISHNEW: Okay.

22 THE COURT: He won't start as a clerk until October  
23 1st, but -- so things that you may have sent to --

24 MR. WISHNEW: That's fine. I can resend it when I get  
25 back to the office.

1 THE COURT: You can check with Mariloly. We may have  
2 it. My outgoing clerks left things in good shape when they  
3 left. So -- but with that, I've kept the schedule pretty much  
4 what you all agreed to.

5 Let me ask you, Mr. Lewis or Mr. Winterton, is there  
6 anything you want to add at this point?

7 MR. LEWIS: If I could, Your Honor.

8 THE COURT: Go ahead.

9 MR. LEWIS: And we had discussed this last week.  
10 Since our last hearing before Your Honor, on April 16th, I've  
11 continued to reach out to counsel to see if we can't resolve  
12 this, certainly along the lines that we started to discuss at  
13 that last hearing by, in essence, taking the agreed to value of  
14 the property and deducting from that the first mortgage that  
15 was refinanced, and anything that may have benefited Mr.  
16 Sharpe, et cetera, et cetera.

17 Unfortunately, I haven't -- while Mr. Wishnew has been  
18 responsive to me and has certainly returned my dozen e-mails  
19 and phone calls, unfortunately it wasn't until last week when  
20 chambers reached out to Mr. Wishnew about getting a status  
21 conference and, in turn, Ms. Handley scheduled Mr. Sharpe's  
22 deposition, that was the first time -- when we had a call last  
23 week, that for the first time they were able to articulate why  
24 they disagreed with my analysis.

25 So it's been very frustrating to us. I mean, this is

1 an unsecured claim. I believe, just from a dollar perspective,  
2 we're not that far off. We've already spent -- and certainly,  
3 the trust has spent more than, I believe, this claim is worth  
4 just on the issue of preclusion and failure to state a claim  
5 issue. So I would ask Your Honor -- I don't know if you  
6 typically do this -- perhaps Your Honor could assist us in  
7 seeing if we can't have a settlement discussion with Your  
8 Honor.

9 I realize you'd be trying it. But given the dollars  
10 involved, I just think that now that they want to do  
11 depositions, I mean, we're spending more money than this case  
12 is worth. And I have certainly even before April 16th tried to  
13 resolve it. And again, after Your Honor's twenty-eight-page  
14 decision, have again tried to resolve it and just haven't  
15 gotten anywhere.

16 THE COURT: Well, let me say a couple of things. I  
17 don't -- do you want to respond first, Mr. Wishnew?

18 MR. WISHNEW: Sure, Your Honor. Certainly,  
19 Mr. -- I'll agree with Mr. Lewis that he has been proactive in  
20 trying to resolve this, and we've responded based upon what the  
21 Borrower Trust believes the claim is worth. I won't debate --

22 THE COURT: Yeah, I don't want to get into dollars  
23 and --

24 MR. WISHNEW: No. Right. I won't talk dollars and  
25 cents. I don't want to debate his characterization as to what

1 the costs are to the Borrower Trust or not. I'm not going to  
2 into the Borrower's Trust arrangement with its respective  
3 counsel. I'll just say that there's a philosophical difference  
4 as to what we think the merits of the claim are. And so  
5 notwithstanding the fact that, yes, this is an unsecured claim  
6 and, yes, it's receiving fractional dollars on the final claim  
7 amount, the Borrower's Trust is not willing, at this point, to  
8 get to the number where Mr. Sharpe is at. And so that's why  
9 we've reached an impasse at this point.

10 THE COURT: Let me -- I want to address this issue  
11 about -- Mr. Lewis, I won't mediate because I have to be the  
12 trier of fact. With that said, I -- there's experienced  
13 counsel on both sides, and I think -- I'm not sure how much  
14 help a mediator could be in the circumstances. But I just  
15 won't do it because I've got to be the trier of fact.

16 MR. LEWIS: Okay.

17 THE COURT: And I appreciate -- even if the parties  
18 were willing to agree that the Court could do it. Look,  
19 I'm -- each of the status conferences, each case management  
20 conference we're having today are in matters in which the Court  
21 has overruled in part -- in whole or in part the Trust's  
22 objection. And unless resolved by settlement, each of these is  
23 going to go to trial. And I'm very concerned about the cost to  
24 the Trust of having to go to trial in these matters, and I'm  
25 very mindful of the burden and expense on the claimants.

1 Some -- Mr. Sharpe's represented by counsel; others are pro se.

2 And there's no question that because these are  
3 unsecured claims, ultimately prevailing, you're getting very  
4 diluted dollars back. I can't change that as to those facts.  
5 What I would ask you both to do is -- have you scheduled Mr.  
6 Sharpe's deposition at this point?

7 MR. LEWIS: I know they had -- --

8 THE COURT: Mr. Winterson, have you --

9 MR. WINTERTON: -- counsel had discussed it.

10 THE COURT: -- scheduled the deposition?

11 MR. WINTERTON: Not yet. They have approached us and  
12 we were going to schedule it after this conference.

13 THE COURT: Okay. Frankly, I think you ought to do  
14 the depositions sooner rather than later. And with that in  
15 hand -- and I understand there's expense from both sides in  
16 doing that. I mean, you can take one more crack at trying to  
17 settle it before the deposition. But otherwise, take the  
18 deposition and then see whether you can settle it.

19 Look, if you go to trial, that's a lot of work from  
20 both sides. I mean, I require complete pre-trial conference  
21 order. It's -- the template for it is on the court web site.  
22 But it requires work, but if I have to go ahead and try it, I'm  
23 going to go ahead and try it. That's why I'm giving you -- I  
24 left your schedule intact. If it wasn't for the holidays, I  
25 would have shortened the amount of time for fact discovery.

1 But I've given you a trial date. You all know what you're  
2 shooting against.

3 So if we -- let me see if we have the -- a Word  
4 version of it. We'll put these changes in --

5 MR. WISHNEW: Excellent.

6 THE COURT: -- and enter it.

7 Mr. Lewis, Mr. Winterton, talk to Mr. Wishnew. See if  
8 you -- if you get it resolved, please send me a status  
9 letter --

10 MR. WISHNEW: Absolutely.

11 THE COURT: -- to that effect, if you have an  
12 agreement in principle, even if it's not documented yet.  
13 So -- because I'm starting to schedule these in rapid  
14 succession, some even earlier than this trial date. Here,  
15 there are fact -- the prior opinion indicated there are clear  
16 factual issues and that discovery's appropriate. In some of  
17 the others that have come up, I'm not sure that that's  
18 necessarily the case. Okay?

19 MR. LEWIS: Thank you very much --

20 MR. WISHNEW: Thank you, Your Honor.

21 MR. LEWIS: -- Your Honor.

22 THE COURT: Mr. Winterton, thank you for --

23 MR. WINTERTON: Thank you.

24 THE COURT: -- participating by phone?

25 MS. HANDLEY: Thank you, Your Honor.

1 THE COURT: And Ms. Handley as well.

2 Okay? And Mr. Lewis --

3 MR. LEWIS: Thank you.

4 THE COURT: -- thank you.

5 MR. WINTERTON: Thank you.

6 MR. LEWIS: Can I be excused?

7 THE COURT: Yeah, you're excused.

8 MR. LEWIS: Thank you, Your Honor.

9 THE COURT: Okay. What's next, Mr. Wishnew?

10 MR. WISHNEW: Next, Your Honor, is the two status  
11 conferences related to the Borrower Claims Trust's seventy-six  
12 omnibus objection: the two claims that are concerning the claim  
13 of Maria and Elda Thompson, claim 1083, and the claim of  
14 Kristin Karmazyn, claim 2055.

15 I'd like to take the Thompson matter first, and I  
16 think --

17 THE COURT: Sure, let's --

18 MR. WISHNEW: -- Ms. Thompson's on the phone.

19 THE COURT: Ms. Thompson, are you on the phone?

20 MS. THOMPSON: Yes.

21 THE COURT: Thank you very much.

22 Go ahead, Mr. Wishnew?

23 MR. WISHNEW: Thank you, Your Honor. Your Honor  
24 issued -- this matter went to an evidentiary hearing  
25 previously. Your Honor issued a decision on July 1st, 2015, at



1 docket number 8823. There was one issue that the Court  
2 overruled without prejudice. Otherwise, the Court sustained  
3 our Claims Trust objection on all matters within the filed  
4 claim. The one unresolved element of the claim dealt with the  
5 rate of interest being charged to Ms. Thompson while her loan  
6 was being serviced by GMAC Mortgage.

7 Subsequent to the decision being issued, the Borrower  
8 Claims Trust reached out to Ms. Thompson under FRE 408,  
9 extended an offer that we believe compensated her for the  
10 alleged differential in the interest rates over the time of the  
11 loan, represented that obviously that would be the allowed  
12 claim. She had receive the pro rata distribution that all  
13 unsecured claimants will receive, and that claim -- I'm sorry,  
14 that offer was declined by Ms. Thompson.

15 At this point in time, we believe that we have -- the  
16 Borrower Claims Trust has the related or the relevant interest  
17 rate change letters that were not otherwise produced during the  
18 evidentiary hearing to demonstrate that GMAC Mortgage properly  
19 noticed the Thompsons of the interest rate change and that  
20 there is no liability here. We'd be willing to put in a  
21 declaration or submit a very brief objection on that point,  
22 allow Ms. Thompson to respond in kind, and let the Court take  
23 it under advisement, or proceed in -- whichever the Court  
24 believes is the most efficient manner at this point in time.

25 THE COURT: Ms. Thompson?

1 MS. THOMPSON: Yes?

2 THE COURT: Go ahead. Do you have a response?

3 MS. THOMPSON: Well, my response is back when we did  
4 the approval evidence, I did not realize that Ocwen Servicing  
5 was actually involved in my case back in 2007. To me, I  
6 thought that Ocwen was separate from GMAC, and it had nothing  
7 to do with GMAC. But by investigating and doing some research  
8 on who actually we were speaking to when we were getting all  
9 our information, especially the one about the amounts that were  
10 paid and when the payments were paid, it came back to being  
11 Ocwen. So I'm kind of confused as Ocwen supposedly bought the  
12 loan back in 2012 or 2013, or why were they appointed in 2007,  
13 because I thought we were only dealing with GMAC and not  
14 involved with Ocwen.

15 And according to some of the business articles and  
16 back references that I went to, Ocwen was actually involved  
17 with GMAC as owner of GMAC as the third party, which we were  
18 trying to find out from day one who the third party was. And  
19 it turned out to be Ocwen. So I am kind of -- I need to do  
20 some more research to see why Ocwen was involved then. Were  
21 they part of the loan, or -- then? Because then the  
22 bankruptcy, to me, doesn't make sense if they're actually owned  
23 by another company. Another company was actually the third  
24 party.

25 THE COURT: Ms. Thompson, in the opinion that I issued

1 previously, at pages 31 and 32 of the opinion, I dealt with  
2 your claim that GMAC had improperly raised the interest rate --

3 MS. THOMPSON: No, I saw that.

4 THE COURT: Let me -- don't interrupt, please. Don't  
5 interrupt.

6 Part of your claim was that GMAC charged a higher  
7 interest rate than was stated on the billing statements, and  
8 the Trust objected to that portion of the claim. The rest of  
9 your claim -- the objection was sustained. But with respect to  
10 the portion of your claim that alleged that GMAC charged a  
11 higher interest rate than was permitted, I overruled it. This  
12 is at pages 31 and 32 of the opinion. And to paraphrase from  
13 the opinion, the Thompsons argued that their monthly principal  
14 and interest payments were \$1,227.71, and that the annual  
15 interest rate was 5.99 percent, with a margin of 2.75 percent.

16 The Thompsons presented a forensic review report that  
17 indicates that the annual percentage rate actually charged was  
18 6.6554 percent rather than 5.99 percent, and the margin was  
19 2.75 percent. The Trust responded that the Thompson mortgage  
20 is an adjustable rate mortgage and that GMACM correctly  
21 charged, collected, and applied payments in accordant with the  
22 note, mortgage, and letters reflecting the adjustable interest  
23 rate terms that were sent to the Thompsons in June and December  
24 of each year, from 2009 through 2012.

25 The Trust, however, has failed to provide the Court

1 with copies of these letters. The opinion goes on to quote  
2 from the note, which was an adjustable rate note. And the  
3 Trust argued that the increase in the interest rate was  
4 permitted and consistent with the provisions of the adjustable  
5 rate note. But then I said on page 32, "But without copies of  
6 the letter notifying the Thompsons of the change in their  
7 interest rate, there are disputed issues of fact whether GMACM  
8 properly calculated, applied, and charged interest on the  
9 Thompsons' loan account. As such, the Trust has not met its  
10 burden of proof, and, to that extent only, the objection is  
11 overruled without prejudice."

12 So that's where things stand after my opinion in the  
13 case. With respect to Ocwen, Ocwen never owned the loan.  
14 Ocwen -- after the bankruptcy was filed, Ocwen purchased the  
15 mortgage loan servicing platform from GMAC. They never owned  
16 the loan, but they assumed the responsibilities for servicing  
17 most of the loans that GMAC had been servicing. So that's  
18 Ocwen's connection. The allegations that you made in your  
19 proof of claim was while GMAC was servicing your loan, they  
20 improperly raised the interest rate.

21 Mr. Wishnew has indicated that the Trust has the  
22 documents that I found were missing at the time I wrote the  
23 opinion, and they want to proceed with their objection to that  
24 claim. It's a pretty straightforward matter. What -- one of  
25 two -- Ms. Thompson, if -- let me ask you this, Mr. Wishnew.

1 Have you provided the Thompsons with copies of those documents?

2 MR. WISHNEW: I have to go back to my records and  
3 check. If I haven't, we certainly can do it in very short  
4 order.

5 THE COURT: Well, here's what I'm going to do. This  
6 is -- this matter needs to get resolved. This is pretty  
7 straightforward. All other aspects of the Thompson  
8 claim -- the objection has been sustained. This one portion  
9 remains. I certainly take it seriously whether the Trust  
10 properly raised the interest rate from 5.99 percent to 6.6554  
11 percent -- 6.6554 percent. And the answer to that question is  
12 going to be controlled by the documents. The Trust indicates  
13 that it gave the required notices to the Thompsons.

14 I can't answer, Ms. Thompson, whether you have any  
15 ongoing disputes with Ocwen about their servicing of the loan.  
16 If you do, that's not before this Court. I don't deal with  
17 claims against Ocwen. I don't know whether you're in  
18 communication --

19 MS. THOMPSON: My --

20 THE COURT: -- with Ocwen.

21 MS. THOMPSON: No, I'm getting the information from  
22 the proof of evidence that they demonstrated back in -- when we  
23 went into court showing the evidence. The -- one of the  
24 evidence that they gave was that Ocwen was actually talking to  
25 us about the loan, when it was under discussions of which date

1 they sent the information, it was under Ocwen. And nowhere in  
2 those papers that they sent for approval of evidence, they  
3 could show that it was GMAC. They all recognize Ocwen as part  
4 of the loan, so that's where my misunderstanding is, because  
5 back in 2007 it was supposed to be GMAC that we were talking to  
6 on the phone.

7 But according to their own records that they sent us,  
8 it was Ocwen that was responding to us back in 2007. So you  
9 can understand where the confusion comes from.

10 Hello?

11 THE COURT: Yeah, I'm here. I'm looking at my  
12 calendar. Just bear with me a minute, Ms. Thompson.

13 MS. THOMPSON: Oh.

14 (Pause)

15 MS. THOMPSON: It was under Exhibit BT, number 5.

16 THE COURT: All right. Just bear with me a minute.  
17 I'm making some notes here.

18 MS. THOMPSON: Okay.

19 (Pause)

20 THE COURT: Well. I'm going to do the following. I'm  
21 going to enter a scheduling order requiring the Trust to submit  
22 any evidence on which it relies on, a declaration, and any  
23 exhibits -- the declarations need to authenticate whatever  
24 documents are provided -- by October 7th -- Wednesday, October  
25 7th, at 5 p.m.

1           The Thompsons may submit written responses, if any, by  
2           Wednesday, October 25th at 5 o'clock. We're going to conduct a  
3           trial limited to the issues about the correct interest rate on  
4           Wednesday, November 4th at 2 p.m.

5           Ms. Thompson, after you get the evidence from the  
6           Trust, on or before October 7th, I encourage you to speak with  
7           Mr. Wishnew or his colleagues to see whether, at least as to  
8           this issue of the interest rate that GMAC charged, that was the  
9           increase in rates, whether you wish to drop that portion of  
10          your claim. I'm not telling you to do that. I'm just saying  
11          you should confer with Mr. Wishnew to see whether you can  
12          resolve it. Mr. Wishnew says the Trust has found the documents  
13          it needs to establish that it correctly raised your interest  
14          rate.

15          Mr. Wishnew, your declarant needs to be present in  
16          court for cross-examination at the trial on November 4th at 2  
17          o'clock. That's a ResCap omnibus hearing date in the morning.

18          MR. WISHNEW: Okay.

19          THE COURT: And we'll do the trial, if necessary, in  
20          the afternoon.

21          Ms. Thompson --

22          MS. THOMPSON: Yes.

23          THE COURT: -- if you have any evidence you're going  
24          to offer in opposition, make sure you have it ready --

25          MS. THOMPSON: I will.

1 THE COURT: -- your testimony, whatever, on November  
2 4th. Okay? The issue is quite a narrow one. But since I  
3 previously found the Trust had not provided that evidence at  
4 the time of the claim objection, we've got to bring this to a  
5 final conclusion. So if that portion of the claim is not  
6 withdrawn, we'll go to trial on November 4th, and I'll enter an  
7 order with these dates. Make sure you serve a copy by mail on  
8 the Thompsons, okay?

9 MR. WISHNEW: Will do, Your Honor.

10 THE COURT: Ms. Thompson, thank you very much. Is  
11 there anything you want to add, at this point?

12 MS. THOMPSON: No. I just want to make sure that we  
13 get loan interest, everything that was discussed in the  
14 forensic order. And also about the -- the exhibit that all the  
15 evidence that they demonstrated that Ocwen was the one that we  
16 were responding to back in 2007.

17 MR. WISHNEW: Your Honor, that last point is not at  
18 issue right now.

19 THE COURT: It's not. Ms. Thompson, I'm just telling  
20 you, the only issue that we're having a trial on is the issue  
21 identified on pages --

22 MR. WISHNEW: 31 and 32.

23 THE COURT: -- 31 and 32 of the prior opinion. You  
24 have that opinion. It deals solely with -- it was the portion  
25 beginning near the top, first full paragraph on page 31 where I



1 overruled the Trust's objection, to the portion of your  
2 statement relating to the higher interest rate they charged.  
3 That's the only issue that's going to be subject to the trial.

4 MS. THOMPSON: Okay.

5 THE COURT: I'm not going to permit evidence or  
6 argument with respect to any of the other issues that I  
7 previously resolved. Okay?

8 MS. THOMPSON: Okay.

9 THE COURT: All right. If necessary, I'll see you on  
10 November 4th at 2 o'clock for the trial. Thank you very much,  
11 Ms. Thompson.

12 MS. THOMPSON: Okay.

13 THE COURT: Okay.

14 MR. WISHNEW: Thank you, Your Honor.

15 THE COURT: All right, next.

16 MR. WISHNEW: That brings us to the contested claim,  
17 claim number 2055, filed by Kristin Karmazyn. I believe Ms.  
18 Karmazyn is on the phone.

19 THE COURT: Ms. Karmazyn, are you on the phone?

20 MS. KARMAZYN: Yes, sir.

21 THE COURT: Okay. If you can, just speak up a little  
22 bit, okay?

23 MS. KARMAZYN: Okay.

24 THE COURT: Okay, Mr. Wishnew?

25 MR. WISHNEW: Thanks, Your Honor. Your Honor, after

1 Your Honor had issued a prior decision on this claim, we  
2 reached out to counsel for Ms. Karmazyn, and since then I'm not  
3 sure if Ms. Karmazyn is still represented by the same counsel  
4 who she was dealing with previously -- it was a gentlemen by  
5 the name of Matthew out in Colorado -- or whether she's  
6 retaining different counsel.

7 So communications have been a bit spotty since after  
8 we had reached out to him asking for evidence of damages as  
9 well as proof of delivery of the payment associated with the  
10 second repayment plan, we never got anything. And in  
11 subsequent follow-up, it seemed like she might -- Ms. Karmazyn  
12 might be changing counsel.

13 So we're here today to try and, I guess, reset; figure  
14 out where Ms. Karmazyn is in terms of retaining counsel; and  
15 whether she's able to provide us with the documents to  
16 substantiate timely deliverance of the payment prior to the  
17 foreclosure; and if not, then move forward toward an  
18 evidentiary hearing.

19 THE COURT: I'll let Ms. Karmazyn speak in a minute.  
20 On July 23rd, 2015, a letter from Ms. Karmazyn to the Court was  
21 filed on ECF. And she indicated that she wanted the  
22 evidentiary hearing scheduled, and she indicated in the letter  
23 that she was in the process of interviewing and choosing New  
24 York counsel to represent her. She asked that she get thirty-  
25 days' notice of a trial date.

1 And so I've read that, Ms. Karmazyn. I've also looked  
2 back at the prior opinion that I entered. So this was the  
3 opinion overruling the ResCap Borrower Claims Trust's objection  
4 to claim number 2055 filed by Michael and Kristin Karmazyn.  
5 That opinion is dated April 1, 2015.

6 At page 10 of the opinion, I think it focused at the  
7 heart of the factual dispute that remains. I'll paraphrase  
8 what the opinion says. That the Karmazyns' supplement raises  
9 issues of fact whether Karmazyn properly made the initial  
10 installment required under the second foreclosure plan and  
11 whether the debtors' rejection of such payment and foreclosure  
12 of the property subjects them to liability on the claim.

13 The second foreclosure plan sets forth that  
14 foreclosure proceedings will be suspended but not terminated if  
15 the debtors receive the executed second foreclosure plan  
16 agreement and the initial installment in the amount of  
17 \$1,244.65 no later than monthly. It goes on from there. I'll  
18 stop reading there.

19 Skipping a little, it says, "The Trust does not argue  
20 that the Karmazyns' payment was not timely received, instead  
21 asserting that the debtors returned such payment because it was  
22 in an insufficient amount. However, this payment was allegedly  
23 made in the exact amount specified in the second foreclosure  
24 plan. Whether the debtors' refusal to accept this payment  
25 followed by the foreclosure on October 7, 2009 may give rise to

1 liability to the Karmazyns, requires factual determinations  
2 that cannot be made at this point.

3 "While the parties have not addressed the legal  
4 theories on which liability could be based, it appears that  
5 Karmazyn may state a claim for breach for contract of the  
6 second foreclosure plan and perhaps on other grounds as well."

7 So that's just -- obviously the opinion itself speaks  
8 for itself. But I went back to review it to see what are the  
9 issues that are likely to need to be tried.

10 Ms. Karmazyn, while I'm going to give you a chance to  
11 respond, I'm obviously interested in whether you've been able  
12 to obtain counsel, at this point?

13 MS. KARMAZYN: As of this moment, this morning, I have  
14 not signed with the two counsels that have proposed to take my  
15 case. I'm struggling a little bit with that, because they want  
16 to go -- they're more interested in the second part of this  
17 case than they are the original case, which at this point, I  
18 might just sign and let them both go for it.

19 What I'd like to point out is, the counsel of the  
20 Trust never reached out to me. I called them first. Because  
21 at this point, I just want this over. And the reason that the  
22 talks stopped with the counsel is because they came up with  
23 some accusations that for six years I've never been there.  
24 One, they never received the payment, which everybody -- that  
25 was never issued for six years; and then secondly, they made

1 the accusation that I didn't make any payments for two years,  
2 2008 and 2009, which has never been the issue.

3 So at that point, the talks just stopped. I mean, you  
4 know, unfortunately, every accusation they make costs me money,  
5 and I don't have it. And it's ridiculous. So I just want -- I  
6 want a trial.

7 THE COURT: Okay. So here's what I'm going to do, Ms.  
8 Karmazyn. Obviously, if you have counsel, that's great.

9 MS. KARMAZYN: Um-hum.

10 THE COURT: And if you don't, you could certainly  
11 proceed to trial without counsel. It's obviously difficult for  
12 borrowers who are not lawyers to represent themselves. But  
13 I've been doing trials for them. But it's difficult. There's  
14 no question about it.

15 Your letter asks that you have at least thirty days'  
16 notice of trial. What I'm going to do is the following. I'm  
17 going to enter a scheduling order providing that any fact  
18 discovery concludes on or before 5 o'clock November 20th, 2015.  
19 So I set that long enough that if you get counsel and they want  
20 to take some discovery, you're going to need to move quickly  
21 with respect to counsel, or without counsel; if you're going to  
22 take discovery, go ahead and do it.

23 I'm going to schedule the trial for January 5 and 6,  
24 2016. So you have -- that's a Tuesday and Wednesday after the  
25 New Year's break. I'm going to give you one other date. Hang

1 on. I'm going to require, Mr. Wishnew, a joint pre-trial  
2 conference order on or before 5 p.m. December 11th. And that's  
3 a few weeks after the cutoff of fact discovery.

4 MR. WISHNEW: Okay.

5 THE COURT: I don't want to get into the midst of what  
6 settlement discussions you've had, but from the April 1st  
7 opinion, Mr. Wishnew, the portions that I paraphrased at page  
8 10, it certainly describes what I thought were the issues that  
9 have to be resolved. And Ms. Karmazyn seems to be saying that  
10 the Trust has raised other issues with her.

11 I mean, I know there were disputes about whether the  
12 Karmazyns' payments under the forbearance plans, the  
13 foreclosure plans, whether those payments were credited or not.  
14 But it seems to me -- and I know that Ms. Karmazyn had disputed  
15 whether the Karmazyns had received notice of foreclosure dates,  
16 of the loan modification agreements, first foreclosure plan,  
17 second foreclosure plan. You came back in the supplement and  
18 actually attached copies that the Karmazyns had countersigned.

19 MR. WISHNEW: Um-hum.

20 THE COURT: You know, Ms. Karmazyn, it seemed to me  
21 that really the operative document is the second foreclosure  
22 plan, because you signed it, GMAC signed it. And the dispute  
23 then was, okay, there was a contract between you and GMAC; it  
24 required certain things on your part; it required certain  
25 things on their part. And the factual dispute seems to be

1 whether you made the payments that were required to be made,  
2 whether the Trust improperly rejected the payments, if you made  
3 them.

4 I'm not trying to foreclose you from the arguments  
5 that you want to make at trial, but it just -- when I went back  
6 to review this, that really does seem to be the focus of the  
7 dispute between you, whether -- there was a dispute -- I use  
8 this term a little loosely, because the Trust's writings that  
9 they've submitted, I think, made it clear that the payments  
10 that you made had to be in certified funds; that personal  
11 checks weren't acceptable. This has come up quite a bit, Ms.  
12 Karmazyn in many other matters.

13 I can just tell you, the Trust is on solid ground when  
14 they insisted that any payments be in certified funds and if  
15 they returned the payments to you if they weren't. Okay?

16 But what happened -- what did or didn't happen under  
17 the earlier agreements that you reached with GMAC, seems to me  
18 to be supplanted by what happened under the second foreclosure  
19 plan. You say that they improperly refused to accept the  
20 payments and went ahead with the foreclosure on October 7th,  
21 2009. They say they acted properly.

22 But so I'm going to enter a scheduling order. I'm  
23 giving you -- because I know -- because you said in your letter  
24 you're trying to obtain counsel, again, I've allowed a little  
25 longer period of time than I might otherwise do. I want to

1 give you a chance, if you can get counsel, you need to get  
2 counsel and --

3 MS. KARMAZYN: Well, and you don't have to -- you  
4 don't have to put it off anymore. I have my two proposals on  
5 the table. That was in July. So I'm ready to go. I'll sign  
6 and they can go for whatever they want to go to.

7 THE COURT: Do you want to go earlier than January?

8 MS. KARMAZYN: Yes.

9 THE COURT: I'll give you an earlier --

10 MS. KARMAZYN: Let's do it.

11 THE COURT: I'm sorry.

12 MS. KARMAZYN: Let's do it. You can -- I'm good.

13 That was in July. I already have the proposals from the two  
14 firms. So we'll just go ahead and sign today.

15 THE COURT: Okay. I'll give you the -- I'm going to  
16 go with these dates. November 20th is the conclusion of fact  
17 discovery; January 5th and 6th is the trial dates.

18 MS. KARMAZYN: Okay.

19 THE COURT: December 11th for a joint pre-trial  
20 conference order. You can tell your counsel, if they're not  
21 aware of it, that on our court's public Web site, under my  
22 chambers rules -- actually, Mr. Wishnew, send Ms. Karmazyn the  
23 template for the joint pre-trial conference order so she can  
24 give it to her counsel?

25 MR. WISHNEW: Very good.



1 THE COURT: Okay.

2 MR. WISHNEW: And if I can ask that as soon as she  
3 actually engages counsel, if they could reach out to me?

4 THE COURT: Yes. So would you do that, Ms. Karmazyn?  
5 If you're going to -- as soon as you've retained counsel, they  
6 should make an appearance, and they ought to talk with Mr.  
7 Wishnew about whether this is going to be resolved, and if not,  
8 they can coordinate just exactly how the trial's going to go.  
9 Okay?

10 MS. KARMAZYN: Absolutely. And we have some new  
11 evidence that we got last week from the Arapahoe County  
12 Assessor for the first modification in 2009 that was filed by  
13 everybody. That will just show everything. So --

14 THE COURT: Okay.

15 MS. KARMAZYN: -- I'll send that to him too.

16 THE COURT: That's fine. Okay?

17 MS. KARMAZYN: Okay. All right.

18 THE COURT: All right, thanks very much, Ms. Karmazyn.

19 MS. KARMAZYN: Thank you.

20 THE COURT: Okay.

21 MR. WISHNEW: Thank you, Your Honor. That brings us  
22 to the last matter on for today's calendar.

23 Page 5 of the agenda, the objection of the ResCap  
24 Liquidating Trust to claim numbers 2385, 2386, 2387, 2388, and  
25 2389, filed by Duncan K. Robertson.

1 I will turn the so-called podium over to my colleague,  
2 Adam Lewis, who will be conducting this telephonically. And I  
3 believe Mr. Robertson is also on the phone.

4 THE COURT: Mr. Robertson, are you on the phone?

5 MR. ROBERTSON: I'm on, Your Honor.

6 THE COURT: Okay. Mr. Lewis, are you on the phone?

7 MR. A. LEWIS: I am, Your Honor. And I appreciate  
8 your letting me appear by phone.

9 THE COURT: Okay, go ahead, Mr. Lewis.

10 MR. A. LEWIS: Your Honor, the case is in a little bit  
11 of disarray as a result of some recent developments. The Court  
12 may recall that previously the Court entered a scheduling order  
13 which set the termination of fact discovery as September 4th,  
14 expert discovery as October 8th, joint pre-trial statement for  
15 the 19th of October, and trial for the 26th and 27th of  
16 October.

17 On the 4th of September, the Court ruled on the motion  
18 to reconsider and denied Mr. Robertson's motion and granted  
19 ours, and wrote that the claim was expunged and dismissed.

20 THE COURT: Yeah, let me just stop you there, Mr.  
21 Lewis.

22 MR. A. LEWIS: Yeah.

23 THE COURT: That was clearly -- so that appears like  
24 in the first paragraph. When you get to the end of the  
25 opinion, though, I think it made clear that what I did was

1 grant the motions for reconsideration, did what I did, but what  
2 was not clear -- and the September 17th order, I think,  
3 clarifies it -- I will acknowledge that the first paragraph was  
4 an error in saying that the claims were expunged, because what  
5 clearly remains is the trespass claim. And that's what needs  
6 to get resolved in the trespass claim.

7 MR. A. LEWIS: Yes, Your Honor. We don't -- we  
8 understand that. But on the 4th, I think there was a fair  
9 amount of confusion. Mr. Robertson actually filed or served us  
10 with a notice of appeal --

11 THE COURT: It never got filed. Let me put it that  
12 way.

13 MR. A. LEWIS: Yes, so I see, Your Honor. I  
14 appreciate that. But the point is, that he thought what we  
15 thought. And then he also filed a motion at the same time to  
16 get some clarification.

17 THE COURT: Right.

18 MR. A. LEWIS: The point being, not that we think the  
19 case is gone, but that the case is obviously on somewhat  
20 different terms than it was when the Court set the pre-trial  
21 order, the calendar. And the result has been some confusion  
22 over discovery.

23 There's also one other problem that we were working  
24 out with Mr. Robertson separately. The Court may recall that  
25 when it ruled on the original objection, it rejected Mr.

1 Robertson's claims for trespass prior to a date in May of 2009,  
2 because of the statute of limitations. And that left one  
3 trespass claim.

4 The Court's ruling appeared to set that trespass claim  
5 as against Homecomings, when, in fact, GMAC had replaced  
6 Homecomings as the servicer. Mr. Robertson noticed that, had  
7 in mind a procedure for trying to fix that problem. We  
8 suggested an alternative procedure where we would stipulate to  
9 the replacement of Homecomings as a defendant with GMAC. That  
10 stipulation arrived signed in our offices on the 4th, the same  
11 day that the Court issued its ruling on the motions to  
12 reconsider. So it never got filed.

13 THE COURT: Okay.

14 MR. A. LEWIS: But we still think and I'm sure Mr.  
15 Robertson enthusiastically agrees that the real correct  
16 defendant, now, for the one remaining trespass claim in 2010,  
17 is not Homecomings, which should be out of the case altogether,  
18 along with the other defendants, but instead against GMAC.

19 We're I suppose, prepared to resubmit the stipulation,  
20 or if the Court prefers to draft its own order basically  
21 substituting in GMAC for Homecomings on the one remaining  
22 trespass claim, which is the only remaining claim altogether,  
23 that would be just fine with us too.

24 We were about to serve Mr. Robertson with our  
25 discovery responses, which were due on the 4th as well, as were

1 his. He served us with his when he sent over his stipulation.  
2 We were just tweaking a couple of things and needed to get  
3 the -- one of the clients to sign our responses to  
4 interrogatories when the order on the motion to reconsider was  
5 issued. And so we just held off.

6 Our responses were to a lot of discovery that is no  
7 longer relevant to this case because it concerned the other  
8 claims against RFREH, concerned claims against Homecomings,  
9 which really aren't against Homecomings, and so on. So Mr.  
10 Robertson's discovery is aimed at Homecomings with respect to  
11 the trespass claims, and it should be aimed at GMAC.

12 We're thinking that it might be useful if the Court  
13 reset the schedule a little bit. And I'm just going to throw  
14 out some potential dates here, just as a place to start. I  
15 think both parties need to revise their discovery requests to  
16 line up with the current status of the case, which is that  
17 there's only one claim, and it's the trespass claim against  
18 GMAC, whereas when the discovery requests were sent out, they  
19 concerned many additional claims, and they also concerned  
20 Homecomings as the trespass defendant instead of GMAC.

21 We think we can revise ours within ten days. It  
22 shouldn't be that difficult. I imagine Mr. Robertson can do so  
23 as well, his request. And then we could, I think, respond to  
24 his revised requests within ten days of that. And we imagine  
25 Mr. Robertson could do the same thing.

1 And then we'd need a little bit of additional time in  
2 case we decided after seeing what the responses were, we wanted  
3 to take his deposition.

4 The bottom line is, we're not so sure that the current  
5 calendar works, given what transpired during early September,  
6 and we're thinking it needs to be adjusted a little bit in  
7 order to accommodate the developments that began around  
8 September 4th.

9 THE COURT: Okay, Mr. Robertson --

10 MR. A. LEWIS: That's kind of the bottom line. And I  
11 don't think I have anything to add at this moment. I'm more  
12 than happy to answer questions.

13 THE COURT: Mr. Robertson?

14 MR. ROBERTSON: Yes, Your Honor. I do have one point  
15 that I disagree with, with respect to what counsel said. And  
16 that is this entire thing has been a learning experience for  
17 me, not only of course, how to deal with court matters, but  
18 also just the facts of the case.

19 It was very revealing when there was a declaration of  
20 Kathy Priore, Exhibit Q was submitted as a previous exhibit in  
21 this matter. And it detailed the incidents of trespass and  
22 exactly what they did and the dates they did it. And that was  
23 previously not known. And so at that point, it became clear  
24 that actually, one of the most serious trespass violations  
25 occurred in June of 2009, which was -- this is within the

1 statute of limitations. It was Homecomings in the driver's  
2 seat at that point.

3 And so I am very reluctant to say just let's dismiss  
4 Homecomings and not worry about -- and put everything over to  
5 GMAC. If GMAC wants to assume the liability that Homecomings  
6 had, I don't object to that. And if we can get this settled in  
7 an immediate matter, I'm all for that too.

8 But I don't particularly follow on the discovery  
9 thing. So discovery was due. I submitted mine, and simply  
10 deleted the questions that directly dealt with the other  
11 claims. And I don't see why the Trust could not do the same if  
12 they say they've got it all ready to go, just delete those  
13 items that pertain particularly to the other claims and submit  
14 it.

15 MR. A. LEWIS: Your Honor, if I may? It's Adam Lewis.

16 A couple of things in response to that. First of all,  
17 Mr. Robertson mentioned settlement. He's been telling us for  
18 quite some time now he's going to send us a settlement  
19 proposal. We haven't seen it yet. And we're more than happy  
20 to respond to it if and when we see it. I suspect he needs to  
21 reconsider, to some extent, what he might have otherwise  
22 proposed or was thinking of proposing, because the claims are  
23 so much narrower than they were before September 4th.

24 The second point is, in terms of what Mr. Robertson's  
25 discovery looked like, he didn't just simply delete things. He

1 answered some stuff, he didn't answer some other stuff. And  
2 once again, in the current state of things, the only claim  
3 remaining is not even against Homecomings, it's against GMAC,  
4 and we need to fix that in the way the claims are set out.

5 The notion that Mr. Robertson first learned about the  
6 Homecomings claims and hasn't had a chance to do anything about  
7 alleged possible claims against Homecomings in the gap period  
8 doesn't fly, because he saw Ms. Priore's declaration in our  
9 objection. And so when he got around to filing his response,  
10 he was on notice if he thought there were some claims there.  
11 Nothing has happened since then.

12 And then finally, Your Honor, I think it's appropriate  
13 here to eliminate the notion that Mr. Robertson is proceeding  
14 pro se and is learning a lot about legal proceedings. Mr.  
15 Robertson has been conferring with counsel right along. Indeed  
16 he admitted that in response to certain interrogatories that we  
17 asked him specifically, are you conferring with counsel, and if  
18 so, about what?

19 And his responses were yes, and getting advice and  
20 consultations and having them review and help him with drafting  
21 the various pleadings that have been filed in this court. So  
22 he's been -- indeed if you look at his e-mails with us, he's  
23 copying counsel on those e-mails. So Mr. Robertson is not  
24 really pro se here.

25 THE COURT: Am I supposed to fault him for that, Mr.



1 Lewis?

2 MR. A. LEWIS: No, Your Honor. But -- I have no  
3 objection to his consulting with counsel. But the notion that  
4 he's proceeding pro se, I think, is just misleading.

5 THE COURT: Let me deal with a couple of things.

6 MR. A. LEWIS: Yeah.

7 THE COURT: First, with respect to the issue of  
8 whether the claim is against Homecomings or against GMAC, Mr.  
9 Robertson said that -- so as things stand now, the claim is  
10 asserted against Homecomings. He said that based on Exhibit Q  
11 to the Priore declaration, he believes there's evidence that  
12 supports a June 2009 trespass that is within the statute of  
13 limitations and that Homecomings was the servicer at the time.

14 I'm obviously not resolving factual disputes. But if  
15 Mr. Robertson believes that he's able to provide evidence that  
16 Homecomings is liable for an improper trespass in June 2009, a  
17 period within the statute of limitations, for which Homecomings  
18 was the servicer, he can certainly go ahead and assert the  
19 claim.

20 With respect to -- what was the date, Mr. Lewis, when  
21 GMAC succeeded Homecomings as a servicer?

22 MR. A. LEWIS: I don't have that handy, Your Honor.  
23 But it was sometime in 2010, I think.

24 THE COURT: Okay.

25 MR. ROBERTSON: No, I believe it was July 1st, 2009.

1 THE COURT: Look, let me just stop you there. Okay?

2 So Mr. Lewis, there've been quite a few claims that  
3 may have had the wrong debtor asserted -- Homecomings or GMAC,  
4 depending on when GMAC succeeded Homecomings as a servicer.  
5 And I think in all of those instances, they've all be resolved  
6 by an agreement that the claim could be asserted against GMAC  
7 if it had been asserted against Homecomings.

8 So here's what I -- first off, I agree that with the  
9 changes to the scope of this dispute arising from the  
10 reconsideration opinion and then most recently the September  
11 17th clarification order, that the schedule needs to be  
12 adjusted. That's appropriate.

13 I would direct you, Mr. Lewis, to speak with Mr.  
14 Robertson to see whether you can stipulate as to which portion  
15 of a claim is asserted against Homecomings, if in fact he  
16 believes in good faith that there was a June 2009 trespass that  
17 he can prove -- improper trespass that he can prove that's  
18 within the statute of limitations when Homecomings was the  
19 servicer. He's entitled to proceed on that.

20 And if the later trespass is allegedly when GMAC was  
21 servicer, so you ought to be able to resolve -- I would hope  
22 that you can at least resolve which portion of the claim is  
23 against which debtor entities. Okay? And do that by  
24 stipulation, and submit it.

25 With respect to the discovery issues, there's no

1 question that the opinion on reconsideration substantially  
2 narrowed the claims that remain in the case. Trespass is the  
3 only thing that remains. And the deadline for -- I'm not  
4 reopening discovery. If the existing discovery that's gone  
5 back and forth needs to be revised, so I'll certainly agree to  
6 extend that deadline -- not to serve new discovery, but to  
7 resolve the issues as to the previously exchanged  
8 discovery -- just bear with me a second, okay?

9 Okay. I want all discovery completed by Monday,  
10 October 5 at 5 p.m. So sort out which portions of what you've  
11 served are operative, and which not. And if you haven't served  
12 them yet, that's your deadline, Mr. Lewis. Okay?

13 MR. A. LEWIS: Yes, Your Honor. Is there any  
14 additional time for taking depositions, if we want one?

15 THE COURT: Well, what have you been waiting for? You  
16 could have taken -- no, there is no more time for taking  
17 depositions. That you should have -- if you were going to take  
18 a deposition you should have done it by now. There's no reason  
19 for that to be extended.

20 So that October 5 deadline is just for the written  
21 discovery previously exchanged. That's the deadline for  
22 providing the responses. Okay.

23 How much time do you want after that October 5 date to  
24 complete a joint pre-trial conference order? Mr. Lewis?

25 MR. A. LEWIS: I think a couple of weeks?

1 THE COURT: Mr. Robertson?

2 MR. ROBERTSON: That's fine. I'd just as soon move  
3 forward as quickly as possible.

4 THE COURT: Okay. Monday, October 19th at 5 o'clock  
5 is the deadline for submitting a joint pre-trial conference  
6 order.

7 And Mr. Robertson, the court's Web site, under my  
8 chambers rules -- actually, Mr. Lewis, send Mr. Robertson the  
9 template --

10 MR. A. LEWIS: Yes.

11 THE COURT: -- for the joint pre-trial conference  
12 order so he doesn't --

13 MR. A. LEWIS: We'll work with him on that, Your  
14 Honor.

15 THE COURT: Okay. And let's get that done.  
16 Obviously, the October 26th and October 27th trial date is  
17 vacated. Bear with me again. I'm looking at my calendars.

18 (Pause)

19 THE COURT: Can you both be ready for trial November  
20 9th and 10th?

21 MR. A. LEWIS: Yes, Your Honor, we can.

22 THE COURT: Mr. Robertson?

23 MR. ROBERTSON: Yes. Yes.

24 THE COURT: Okay. So the trial will be November 9th  
25 and 10th beginning at 9 a.m. each day.

1 Mr. Robertson, in the joint pre-trial conference  
2 order, you have to list all of the witnesses that you intend to  
3 call.

4 MR. A. LEWIS: Your Honor, do you think it would be  
5 helpful if I sent Mr. Robertson a copy of the Mack pre-trial  
6 order, as just a sample?

7 THE COURT: That's fine if you want to do that. I  
8 have no problem.

9 MR. A. LEWIS: Sure.

10 THE COURT: It'll show him what --

11 So Mr. Robertson, what I try and do in these  
12 trials -- and I'm only going to allow -- I mean, the issues  
13 where it's trespass, whether it's one trespass, two trespasses,  
14 are fairly narrow issues. So I am limiting it to the two days.  
15 I think that's probably longer than is probably required. But  
16 I'm scheduling those two days.

17 I'd like to have a final pre-trial conference -- just  
18 bear with me again. Let me look. We'll have a telephone final  
19 pre-trial conference November 4th at 5 o'clock.

20 Mr. Robertson, you understand, I assume, that you know  
21 that for trial you have to physically be present in court. I  
22 don't allow witnesses to testify or any examination of  
23 witnesses over the telephone. So in scheduling the trial for  
24 November 9th and 10th, you have to be here for that.

25 MR. ROBERTSON: I understand.

1 THE COURT: The November 4th pre-trial conference, you  
2 can be by telephone, both of you. You're both -- neither of  
3 you are in New York, so we'll do that by telephone. Okay?

4 MR. ROBERTSON: All right.

5 THE COURT: And Mr. Lewis --

6 MR. ROBERTSON: I do have a couple of questions.

7 THE COURT: -- I'm sorry, I was going to say, Mr.  
8 Lewis, see if you can get this settled. If you can't, we'll go  
9 to trial. Okay, Mr. Lewis:

10 MR. A. LEWIS: Yes, Your Honor, just so may I ask --

11 THE COURT: Mr. Robertson --

12 MR. A. LEWIS: -- the Court one additional question?

13 THE COURT: Yes.

14 MR. A. LEWIS: From the Court's comments about the  
15 trespass issues, I take it that the Court would grant a motion  
16 by Mr. Robertson to amend his claim to include those if he made  
17 one? That's --

18 THE COURT: Yes. Yes, I would.

19 MR. A. LEWIS: Okay.

20 THE COURT: Let's get this done on the merits. Okay?

21 MR. A. LEWIS: All right.

22 MR. ROBERTSON: All right. Just one question. The  
23 other is I do want to comment on that the pro se thing. I have  
24 drafted all of the submissions to the court. I have had no  
25 assistance from counsel on that. I do copy counsel, and I ask

1 them to review it and ask them if I made any major blunders in  
2 what I've written. And also, as the Court is well aware, this  
3 case is also before two other venues at the present time. And  
4 I'm represented in those by that counsel. So of course they  
5 need to know what's going on here. And so that's why they're  
6 copied on virtually everything that goes.

7 THE COURT: Okay. Mr. Robertson, the only thing I'm  
8 not -- you could proceed without a lawyer here. You  
9 don't -- your lawyer is where, in California?

10 MR. ROBERTSON: No, in Washington.

11 THE COURT: Oh, I'm sorry. In Washington. You know,  
12 it's very easy for an out-of-state lawyer to be admitted to  
13 appear in this case. You don't need to have local counsel  
14 appear. I'm not telling you what you should or shouldn't do.  
15 But if the concern was that you had to have a New York lawyer,  
16 you don't. The lawyer would have to be here. He'd have to  
17 file an application for admission pro hac vice, is what it's  
18 called. He has to pay the fee to appear. But I have plenty  
19 out-of-state counsel, particularly in the ResCap case, who've  
20 appeared.

21 So but it's your decision whether to proceed with  
22 counsel or without counsel. We just need to move forward and  
23 get this done.

24 MR. ROBERTSON: Yes.

25 THE COURT: So I'm going to enter an order today just

1 with the October 5 deadline for fact discovery, October 19th at  
2 5 o'clock for the joint pre-trial conference order; November  
3 4th at 5 o'clock for telephonic pre-trial conference; and trial  
4 November 9th and 10th, beginning at 9 a.m. each day. Okay?

5 MR. ROBERTSON: Okay. I did have one other question  
6 based upon Your Honor's comment at the beginning of this. I  
7 did go ahead -- just because I did not know how soon I would  
8 hear back from the Court with regard to the clarification -- I  
9 did go ahead and file a notice of appeal. And I heard  
10 something about that has not been accepted or something?

11 THE COURT: It didn't get filed. I don't think you  
12 sent it to the court. At least --

13 MR. ROBERTSON: What?

14 THE COURT: -- it's not on the -- put it this way, it  
15 wasn't any decision on my part not to permit you to file a  
16 notice of appeal.

17 We got a copy, I think, from Morrison & Foerster, is  
18 where my chambers saw it from. It hadn't been filed. We got  
19 your motion for clarification, and I acted on it quite  
20 promptly. You were quite correct --

21 MR. ROBERTSON: Yes.

22 THE COURT: -- that the trespass claim survived. And  
23 whether you attempt to go forward with an appeal or not, I'm  
24 not getting in the midst of. We're going forward with the  
25 trial of the trespass claim. I don't believe that if



1 you're -- if you're desiring to appeal any other aspect of my  
2 decision, I'm not going to give you legal advice, I'll just  
3 alert you that there's a provision of 28 U.S.C. Section 158  
4 which is the section on appeals, that unless you're appealing  
5 from a final order of the court, which because my orders that  
6 I've entered so far do not entirely dispose of your claim, a  
7 portion of the trespass claim remains, what ordinarily is  
8 required, if somebody wishes to appeal everything -- the other  
9 portions -- they have to seek leave to appeal from the district  
10 court.

11 I'm not giving you legal advice, I'm just --

12 MR. ROBERTSON: Okay.

13 THE COURT: -- my view is that you'll do whatever you  
14 think you need to do. We're going forward on the schedule  
15 we've laid out today with respect to the trespass claims.  
16 Okay?

17 MR. ROBERTSON: Okay.

18 THE COURT: Let me --

19 MR. ROBERTSON: I'm very concerned --

20 THE COURT: -- the only thing I didn't give you a date  
21 for, Mr. Lewis, was trying to work out the stipulation with  
22 respect to against what entities and which claims remain. When  
23 do you think you -- does that October 5 day work for you on  
24 that as well, Mr. Lewis?

25 MR. A. LEWIS: Yes, it certainly does.

1 THE COURT: And Mr. Robertson, you understand? Is  
2 that okay?

3 MR. ROBERTSON: Yes. And basically that we're not  
4 expanding discovery, we're just going with what --

5 THE COURT: No, the stipulation really -- this is the  
6 point about who the defendants remain, whether it's Homecomings  
7 or GMAC.

8 MR. ROBERTSON: Yes.

9 THE COURT: I gather there was a draft of a  
10 stipulation that didn't get signed. That situation -- you'll  
11 have to talk to Mr. Lewis and see whether you can work that  
12 out, okay?

13 MR. ROBERTSON: All right.

14 MR. A. LEWIS: I'm sure we can, Your Honor.

15 THE COURT: Okay? All right. Thanks very much, both  
16 of you.

17 MR. ROBERTSON: Thank you.

18 MR. A. LEWIS: Thank you, Your Honor.

19 THE COURT: Okay.

20 MR. WISHNEW: Your Honor, I believe that's the end of  
21 today's calendar.

22 THE COURT: Okay. While we're still here, I think  
23 that you were in touch with Stephanie Gowel (ph.), within the  
24 last week or two.

25 MR. WISHNEW: Yes.

1 THE COURT: I need to get an update on where we are.

2 There are a number of matters where the Court's prior rulings  
3 have been to sustain in part and overrule in part --

4 MR. WISHNEW: Right.

5 THE COURT: -- objections. And some of these  
6 matters -- we had a bunch of them today --

7 MR. WISHNEW: Right.

8 THE COURT: -- they're getting scheduled.

9 In addition, I don't know whether Stephanie raised  
10 with you -- I don't know how many more claims remain to be  
11 resolved, either -- how many you expect there'll be further  
12 claims objections. Your deadline has not come yet.

13 MR. WISHNEW: Sure.

14 THE COURT: But I'd like to get an update on where we  
15 are.

16 MR. WISHNEW: Sure; sure.

17 THE COURT: And so what I'd like is a status letter  
18 filed on ECF.

19 MR. WISHNEW: Yeah.

20 THE COURT: I mean, as to the ones -- I know which are  
21 the ones that we're -- that are hanging out there after a  
22 decision overruling in part the objections.

23 MR. WISHNEW: Right.

24 THE COURT: You ought to cover those in the letter.  
25 But I need to know more generally --

1 MR. WISHNEW: Okay.

2 THE COURT: -- what -- because the one effort that you  
3 made to have a claim reserve set --

4 MR. WISHNEW: Right.

5 THE COURT: -- was unsuccessful. I don't know in --

6 MR. WISHNEW: Right.

7 THE COURT: Can you give me a sense of how many more  
8 claims there are that we have to deal with?

9 MR. WISHNEW: Let me try and broad-stroke it. So if  
10 you were to -- there's, I think it's -- I want to say it's  
11 about 110 to 120 claims that would fall into the convenience  
12 class bucket, claims with a face amount of less than, I think,  
13 30,000 dollars. Those, I believe, will get -- I don't believe  
14 we'll have to bring those to the Court.

15 There are claims -- there are I think less than a  
16 handful of unliquidated claims. And we would have to bring --

17 THE COURT: Less than five unliquidated claims?

18 MR. WISHNEW: I believe, Your Honor. I believe that's  
19 correct, Your Honor. I mean --

20 THE COURT: Fewer than five?

21 MR. WISHNEW: I'm sorry?

22 THE COURT: Fewer than five?

23 MR. WISHNEW: I believe so, Your Honor. Yes. We want  
24 to address those.

25 Let's see. There are, I'd say, a couple of dozen

1 claims that are liquidated that are currently under review and  
2 might be brought before the Court. And at the same time,  
3 there's also an effort being made by the Borrower Trust to  
4 reach out and try and consensually resolve other claims.

5 I don't have a total count in front of me, but I can  
6 say that where we were, I think it was in June of 2014, when we  
7 brought the claim reserve motion and where we are now, is very  
8 different, very far advanced. And so we're not -- I don't  
9 think there should be a significant amount more of one-off  
10 objections.

11 I would say there would be less than a dozen one-off  
12 objections that would be filed, and perhaps, again, less than a  
13 handful, fewer than five, omnibus claim objections that would  
14 be filed to try and bring this process to a close.

15 THE COURT: How much time do you want to do a status  
16 letter?

17 MR. WISHNEW: I would say -- if we're on the 21st,  
18 Your Honor -- the end of the week of, I think, October  
19 5th -- so October 9th, Your Honor?

20 THE COURT: Okay, that's fine. 5 o'clock October 9th.  
21 I'm not going to enter an order to that effect, but I expect  
22 you to have that --

23 MR. WISHNEW: Sure.

24 THE COURT: We have an omnibus hearing date for  
25 October 15th.

1 MR. WISHNEW: Okay.

2 THE COURT: So if you get your letter in by October  
3 9th --

4 MR. WISHNEW: Yeah.

5 THE COURT: -- we can discuss it.

6 MR. WISHNEW: Okay.

7 THE COURT: You ought to make sure you --

8 MR. WISHNEW: I can put it on the agenda.

9 THE COURT: -- put it on the agenda --

10 MR. WISHNEW: Yes.

11 THE COURT: -- for the 15th.

12 MR. WISHNEW: Very good.

13 THE COURT: Status -- so that anybody out there who --

14 MR. WISHNEW: Sure.

15 THE COURT: File your letter of the status report on  
16 the docket.

17 MR. WISHNEW: Yes.

18 THE COURT: So everybody's who's getting it will see  
19 it.

20 MR. WISHNEW: Okay.

21 THE COURT: And then put it on the agenda --

22 MR. WISHNEW: Okay.

23 THE COURT: -- for the 15th.

24 MR. WISHNEW: Very good.

25 THE COURT: So we could talk about it.

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55

1 MR. WISHNEW: Absolutely.

2 THE COURT: Okay?

3 MR. WISHNEW: Thank you.

4 THE COURT: Thank you very much. All right. We're  
5 adjourned.

6 MR. WISHNEW: Thank you for your time.

7 (Whereupon these proceedings were concluded at 11:19 AM)

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C E R T I F I C A T I O N

I, Aliza Chodoff, certify that the foregoing transcript is a true and accurate record of the proceedings.



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ALIZA CHODOFF

AAERT Certified Electronic Transcriber CET\*\*D-634

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700 West 192nd Street, Suite #607

New York, NY 10040

Date: September 22, 2015